

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**ZACHERIAH MATHENY,**

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**CASE NUMBER 6:19-CR-00035-JCB**

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On June 29, 2021, the court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Zacheriah Matheny. The government was represented by Jim Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk, Federal Public Defender.

Defendant originally pled guilty to the offense of Conspiracy to Manufacture Five (5) Grams or More, but less than 50 Grams of Methamphetamine, a Class B felony. This offense carried a statutory maximum imprisonment term of 40 years. The United States Sentencing Guideline, range based on total offense level of 21 and criminal history category of IV, was 60 to 71 months. On January 23, 2017, District Judge Pamela L. Reeves of the Eastern District of Tennessee sentenced Defendant to 37 months imprisonment followed by 5 years of supervised release, subject to the standard conditions of release, plus special conditions to include drug aftercare, prohibition on taking any opiate-based medication or any other controlled substance without notifying the physician of a substance abuse problem and without approval of the probation officer, and mental health treatment. On May 2, 2019, Defendant completed his term of

imprisonment and began his term of supervision. On July 19, 2019, jurisdiction of this case was transferred to this District.

Under the terms of supervised release, Defendant was required to refrain from any unlawful use of a controlled substance. In Allegation 1 of its petition, the government alleges that Defendant violated his conditions of supervised release by submitting a urine specimens that tested positive for methamphetamine, morphine, and oxycodone. The government represents that Fifth Circuit case law permits a court to find that illicit drug use constitutes possession for the offense.

If the court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine and oxycodone, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon finding of a Grade B violation, the court shall revoke supervised release. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is 12 to 18 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated that they had come to an agreement to resolve the petition whereby Defendant would plead true to violating the conditions of supervision by committing the acts as alleged in Allegation 1 of the government's petition. In exchange, the government agreed to recommend to the court a sentence of twelve months and one day with no supervised release to follow.

The court therefore **RECOMMENDS** that Defendant Zacheriah Matheny's plea of true be accepted and that he be sentenced to twelve months and one day imprisonment with no supervised release to follow. The court further **RECOMMENDS** that the place of confinement be FCI Texarkana, Texas and that Defendant receive drug treatment while incarcerated. The

parties waived their right to objections so this matter shall be immediately presented to the District Judge for consideration.

**So ORDERED and SIGNED this 29th day of June, 2021.**

  
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JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE